

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 05-10019-RGS

UNITED STATES OF AMERICA

v.

DANIEL W. McELROY and  
AIMEE J. KING McELROY

ORDER ON MOTIONS FOR  
JUDGMENT OF ACQUITTAL OR A NEW TRIAL

April 14, 2008

STEARNS, D.J.

On review of the pleadings, I see no basis under controlling law on which the allowance of either motion could be justified. The motion for judgment of acquittal is based on a disagreement as to the force and not the sufficiency of the government's evidence. This is not enough. "[T]he trial judge must resolve all evidentiary conflicts and credibility questions in the prosecution's favor; and, moreover, as among competing inferences, two or more of which are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt." United States v. Olbres, 61 F. 3d 967, 970 (1st Cir. 1995). The motion for a new trial similarly is based on a supplemental jury instruction of which defendants explicitly approved, thus (as the government correctly observes) waiving any objection. United States v. Taylor, 54 F.3d 967, 976-977 (1st Cir. 1995). Consequently, the motions for judgment of acquittal or a new trial and the request for oral argument are DENIED.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE